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Bitcoin - Indirect taxation

As it has (almost) always been, **legislation is one step behind** to human reality, isn't it?

Some of the greatest advances in law arrived after a social disruption:

- Magna Carta
- Napoleonic Code
- Universal Suffrage
- ... Blockchain and Cryptocurrency (?)

It is part of the nature and beauty of the law; to adapt to anything that might come.

However, in terms of the latest technological advances, it seems like blockchain and cryptocurrency are two steps ahead legislation.

In connection to this matter, the most recent judgment issued by the Court of Justice of the European Union (hereinafter "CJEU"), dates back to 2015... from that moment to this day, bitcoin **has increased fourfold its value**.

Not much has been analyzed about cryptocurrency from a legal perspective, and yet there is a *cafe*¹ in Prague where the only accepted currency is **bitcoin**.

At this point I just want to explain briefly the indirect taxation implications of the use of bitcoin that have been analyzed to this day by the CJEU.

The CJEU analyzes the potential exemption from VAT taxation for those transactions where an entity exchanges traditional currency for bitcoin, in return for an amount that corresponds to the existent margin between the purchase price and the selling price.

In accordance with the Court's interpretation of the Article 2(1) (c) of the VAT Directive, this sort of transactions constitute a supply of services in terms of that article; meaning that there is a potential exemption analysis to carry out in order to determine its application to the case in hand.

The CJEU, when analyzing the potential exemption, equates virtual currencies with traditional ones establishing that: *"so far as those currencies have been accepted by the parties to a transaction as an alternative to legal tender and have no purpose other than to be a means of payment, are financial transactions"*.

In this context, the Court focusses its analysis on the chapter 3 of the VAT Directive (i.e. "Exemptions for other activities"); in particular in respect of the interpretation of the Article 135(1) (e) to establish that *"the supply of services such as those at issue in the main proceedings (...) are transactions exempt from VAT"*.

Thus, it can be concluded that so far as the parties of a transaction accept **bitcoin** as a means of direct payment and based under the assumption that they fall under the concept of *"financial transactions"*, they will be exempt from VAT.

¹<https://www.theguardian.com>